



**Before the
Federal Communications Commission
Washington, DC 20554**

Request for Waiver of the)	
FCC Form 500 Filing Deadline)	
for the Jemez Pueblo Tribal Consortium,)	
Jemez and Zia Pueblos, New Mexico)	
)	
Application No. 161061354)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-06
Support Mechanism)	

PETITION FOR WAIVER

The Jemez Pueblo Tribal Consortium (Tribal Consortium or Consortium) petitions the Federal Communications Commission (FCC or Commission) to waive the June 30, 2017 deadline for submission of the Funding Year 2016 FCC Form 500 and the associated special construction deadline extension request (SCDER). Specifically, the Tribal Consortium requests a waiver of the filing deadline to permit implementation of its Category One special construction project by June 30, 2018.

BACKGROUND

The applicants. The Tribal Consortium includes Tribal libraries, New Mexico state charter schools, and Bureau of Indian Education Schools located on the lands of Jemez Pueblo and Zia Pueblo. Both Pueblos are federally recognized Tribes and represent two of the 19 Pueblo Nations located in New Mexico. Steep mountains and canyons characterize the lands of the Jemez and Zia Pueblos, adding to the challenges of bringing broadband connectivity to these

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communities. As both communities are economically distressed with high unemployment rates, the Jemez and Zia schools and libraries qualify for a 90% discount under E-rate program rules.

The special fiber construction project. Recognizing that incumbent providers were unwilling to the extend high-speed broadband connectivity that their communities so desperately need, the Jemez and Zia Pueblos decided to join together, pursue self-provisioning, and leverage the new special construction opportunities available with E-rate modernization. Thus began the over 18-month process of coordination – from land use processes, Tribal Council resolutions, numerous permitting requirements, and an unprecedented level of coordination between the Tribal governments and the State of New Mexico —necessary to work through the unique challenges associated with building across two sovereign Tribal Nations. The final design, which culminated in the Tribal Consortium application, includes self-provisioned construction that ties into an existing network, where leased dark fiber completes the route into a collocation facility in downtown Albuquerque. The result will be dramatically higher broadband speeds at a dramatically lower cost to Tribal communities that today are unserved and underserved.

The application process. The Tribal Consortium takes very seriously the obligation to comply with all E-rate program rules. The Consortium filed its Form 470s and Form 471 and other required documents, such as letters of authorization and Consortium memoranda of understanding, consistent with Commission requirements. The Consortium also responded in a timely manner to all Program Integrity Assurance (PIA) inquiries. The Tribal Consortium's funding commitment decision letter (FCDL) for \$3.9 million was issued on June 30, 2017, the last day of the 2016 funding year. The timing of the FCDL made it impossible to implement the Category One special construction project by the end of the funding year,¹ and required that the Consortium file a service delivery extension request. However, due to a one-time, inadvertent administrative error, the Form 500 and SCDER were not filed by the June 30, 2017 deadline. As soon as the error was detected, the Tribal Consortium took immediate action to comply with the filing requirements and, on July 13, 2017, both the Form 500 and the SCDER were filed in EPC.

¹ *Modernizing the E-rate Program for Schools and Libraries; Connect America Fund*, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15558, para. 49 (2014) (*Second E-rate Modernization Order*).

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DISCUSSION

The Commission has the authority to waive any provision of its rules if special circumstances exist and a waiver of the rule would better serve the public interest.² For the reasons articulated below, the public interest would be far better served by a waiver of the Form 500 filing deadline for the Tribal Consortium than by strict application of the Form 500 filing deadline.

First, the Tribal Consortium application involves the principles of Tribal sovereignty and self-determination, and the federal trust responsibility articulated in the Commission's *Tribal Policy Statement*.³ As a network owned by Tribal governments that will benefit Tribal schools, libraries, and communities, this application implicates the Commission's support for the principles of Tribal self-determination and the trust responsibility that these Tribal Nations share with the Commission. The services that will be provisioned on the network implicate the trust responsibility-related missions and services delivered by other federal agencies as well, such as the Departments of Interior, Education, Commerce, and Agriculture. The unique legal relationship between the federal government and Tribal governments enhances and strengthens the public interest associated with this petition for waiver, as the Commission has long recognized the policy of promoting Tribal self-sufficiency and economic development.⁴ In fact, the Commission cited the *Tribal Policy Statement* in the *Second E-rate Modernization Order*, when it recognized the "unique government-to-government relationship of Tribal [N]ations to our federal government."⁵

² The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 987 F.2d at 1166. *Accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

³ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078 (2000) (*Tribal Policy Statement*).

⁴ *Id.* at 4080-81.

⁵ *Second E-rate Modernization Order*, 29 FCC Rcd at 15561, para. 58.

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The benefit of this E-rate investment committed to the Tribal Consortium will reach far beyond the school and library members of the Consortium and will return dividends in myriad ways for the Tribal communities involved. For example, these E-rate dollars will lead to additional federal dollars and economic development in the Jemez and Zia communities. These communities lack a network like the one planned – one so robust, with the future potential use of fiber, that it will be the platform for an increased quality of life for the members of these communities in ways that are potentially unfathomable at this time. It is beyond doubt that the educational mission will benefit massively. New methods of Tribal self-sufficiency, economic development, and self-determination will be empowered. In a very definable way, this E-rate investment will support and meet the mission of the Commission within Tribal communities. In sum, the impact of this E-rate Consortium application will ultimately extend far beyond the extraordinary, but more immediate, benefits it will bring to the schools, libraries, and communities of the Jemez and Zia Pueblos.

Second, the Tribal Consortium application promises profound and direct benefits to the schools, libraries, and communities of the Jemez and Zia Pueblos. The Internet revolution, as well as E-rate funding, has disproportionately bypassed Indian Country. The Tribal Consortium special construction project will make a dramatic change in that dynamic. Specifically, this project will bring fiber connectivity to the schools and libraries of the Jemez and Zia Pueblos, which will mean, for example:

- A dramatic increase in broadband speed from 3 megabits to 100 megabits and beyond;
- A dramatic reduction in the monthly cost of service, from as high as \$283 per megabit to \$7 per megabit;
- The difference between slow, unreliable Internet service and the ability to, for example, conduct interactive Native language classes online, enable students to take mandatory online assessments, and allow students to complete online homework assignments – things that are impossible with today's unreliable and inadequate level of connectivity;
- The availability of critical community computing services in these Pueblo community libraries whose homes often lack Internet access and computers, which will allow community members to, for example, file taxes, apply for jobs, and access critical social services;
- Connection of the Tribal K-12 network to the University of New Mexico network in Albuquerque, providing new and innovative educational opportunities; and
- Fulfilling the goal of E-rate modernization by bringing fiber connectivity to schools and libraries that, but for E-rate dollars, would never enjoy the benefits that 21st Century fiber connectivity provides.

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The Tribal Consortium application, therefore, will mean the difference between the Jemez and Zia Pueblos becoming full partners in the Internet revolution, able to experience all of the educational and social benefits that broadband promises, and a continued lack of the opportunities that 21st Century connectivity provides.

Third, the Tribal Consortium application is a model for how E-rate can succeed and make a profound difference in Indian Country. Tribal schools and libraries are under-represented in the E-rate program and historically have not reaped the benefits that this program can bring to their communities. One of the major challenges is a lack of capacity to go it alone as an individual applicant. By navigating a path through the unique complexities associated with serving on multiple Tribal lands, the Consortium application is recognized as a national leader in demonstrating that Tribal governments, states, federal schools, and public libraries can create consortia that serve many needs and efficiently use E-rate funds to achieve improved educational outcomes. The Tribal Consortium application, therefore, will lead the way for other such consortium applications across Indian Country, thus taking a major step forward in bridging the Tribal digital divide.

Fourth, the Tribal Consortium application represents effective and efficient use of finite E-rate dollars by simultaneously bringing the cost per megabit way down and broadband speeds way up. Perhaps even more importantly, the E-rate dollars will serve as a force multiplier for these two non-gaming Tribes. This initial investment in connectivity of almost \$4 million will attract federal and private funds to the Jemez and Zia Pueblos and will extend connectivity and economic development far beyond the schools and libraries included in the Consortium application. In sum, the Tribal Consortium application is a perfect illustration of what the Commission is working to achieve through the E-rate program – the highest and best use of E-rate dollars to bring high-speed, affordable broadband to schools and libraries that, but for E-rate, would never see 21st Century connectivity and the infusion of additional federal and private investment dollars into the community.

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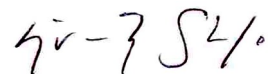
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Finally, in the Form 471 context, the Commission has granted waiver requests due to special circumstances when the form was filed within 14 days of the deadline.⁶ The Tribal Consortium filed both the Form 500 and the SCDER on July 13, 2017, within 14 days of the June 30, 2017 filing deadline. While not an identical situation, the logic of the *Academy of Math and Science Order* applies here. While administrative filing deadlines are important for the effective administration of E-rate, the Tribal Consortium's Form 500 and SCDER were "filed close enough to the deadline so as not to impair the administration of the program."⁷ In this instance, the E-rate dollars have been committed to the Tribal Consortium, no other applicants will be disadvantaged, and USAC's administrative processes will not be adversely impacted by the grant of this waiver request.

CONCLUSION

One administrative error should not deprive the children and community members of the Jemez and Zia Pueblos from all the benefits that the E-rate funding commitment will provide both today and far into the future. For all of the reasons discussed above, the Tribal Consortium application falls clearly within Commission precedent for granting a waiver of its rules. Specifically, given the unprecedented nature of this Tribal E-rate application and the extraordinary public interest benefits that his special construction project will bring to two Pueblo communities unserved by 21st Century connectivity, a waiver of the Form 500 service delivery extension request filing deadline is both appropriate and necessary. Granting this request for waiver, therefore, will prevent a one-time administrative error from derailing the truly extraordinary and long-awaited opportunity that this Tribal Consortium application represents to the children and community members of the Jemez and Zia Pueblos.

Respectfully submitted this 24th day of July, 2017,



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⁶ See *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259, para. 8 (2010) (*Academy of Math and Science Order*) (finding special circumstances exist to justify granting waiver requests where, for example, petitioners filed their FCC Forms 471 within 14 days of the FCC Form 471 filing window deadline).

⁷ *Id.*

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